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JS-6

United States District Court
Central District of California

U.S. BANK NATIONAL
ASSOCIATION,

Plaintiff,

v.

FORTUNE G. SMITH,

Defendant.

Case No. 2:15-cv-01790-ODW(FFMx)

**ORDER REMANDING CASE TO
LOS ANGELES COUNTY
SUPERIOR COURT**

I. INTRODUCTION

Plaintiff moves to remand this action to the Los Angeles County Superior Court for lack of subject matter jurisdiction. For the reasons discussed below, the Court **GRANTS** Plaintiff's Motion to Remand.¹ (ECF No. 8.)

II. FACTUAL BACKGROUND

U.S. Bank's claim arose following a non-judicial foreclosure sale of property located at 14922 Kittridge Street, Van Nuys, California 91405.² (Mot. 3.) On October

¹ After carefully considering the papers, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

² In the Notice of Removal, Defendant erroneously listed the address at issue as that of the Santa Monica Courthouse, but listed the Kittridge address on the federal civil case cover sheet. The Court

1 29, 2014, U.S. Bank served Fortune G. Smith with a three-day notice to quit. (RJN
 2 18.³) The three-day notice advised that additional protections may exist under the
 3 Protecting Tenants at Foreclosure Act of 2009 (“PTFA”). (*Id.* at 15.) The PTFA is a
 4 federal law.

5 On November 12, 2014, U.S. Bank initiated a residential unlawful detainer
 6 action against Smith in the Los Angeles County Superior Court, case number
 7 14R11906. (RJN 4.) On or about December 23, 2014, service of the summons and
 8 complaint was complete. (Mot. 4.) On January 29, 2015, Smith filed an Answer with
 9 the state court denying that U.S. Bank is entitled to possession of the property. (Not.
 10 2; Mot. 4.) On March 11, 2015, Smith removed the action to federal court, alleging
 11 federal question subject matter jurisdiction. (Not. 3) Smith did not have counsel at
 12 the time she removed the instant action to federal court. She has not retained counsel
 13 at this time. On April 28, 2015, U.S. Bank filed a Motion to Remand the instant
 14 action. (Mot.) Smith did not oppose.

15 III. LEGAL STANDARD

16 Federal courts are courts of limited jurisdiction. U.S. Const. art. III, § 2, cl. 1;
 17 *see Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Removal
 18 to a federal district court is proper where the district court has original jurisdiction
 19 over the matter. 28 U.S.C. § 1441(a). However, the removal statute is strictly
 20 construed against removal jurisdiction, and any doubts about jurisdiction are resolved
 21 in favor of remand. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.1992) (per
 22 curiam). The party seeking removal bears the burden of establishing federal
 23 jurisdiction. *Hunter v. Philip Morris USA*, 582 F.3d 1039 (9th Cir. 2009) (citing
 24 *Gaus*, 980 F.2d at 566).

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 27 understands the property at issue to be located at 14922 Kittridge Street, Van Nuys, California
 28 91405.

³ The Court takes judicial notice to the extent it relies on the documents attached to the RJN.

IV. DISCUSSION

A. Timeliness of Removal

Removal is timely if “filed within [thirty] days after the receipt by the defendant, through service or otherwise,” of the complaint. 28 U.S.C. § 1446(b).

Here, Defendant Smith’s removal was untimely. Defendant asserts “[t]his Notice of Removal is timely filed,” but fails to provide dates establishing timeliness. Plaintiff U.S. Bank asserts service of the Complaint was complete “on or about December 23, 2014.” (Mot. 4.) Defendant does not allege that service occurred at any other time and did not oppose Plaintiff’s Motion. Because Defendant did not oppose the instant Motion, the Court finds service effective as of December 23, 2014. Defendant removed the action on March 11, 2015, seventy-eight days later. Even if Defendant did not receive the Complaint until January 29, 2015, the same date she filed her Answer, removal on March 11, 2015, forty-one days later, still falls outside of thirty days. The Court finds that, because Defendant removed the case more than thirty days after receipt of the Complaint, removal was untimely.

Normally, untimely removal is a fatal procedural defect and the Court may remand on that basis alone. However, here, Defendant acted pro se and may not have been aware of the procedural requirements for removal. Still, even if Defendant’s removal were timely, additional grounds exist for remand.

B. Subject Matter Jurisdiction

In the Notice of Removal, Defendant alleges only federal question jurisdiction. However, Defendant is pro se and, in an abundance of caution, Plaintiff’s Motion contends the Court lacks jurisdiction under either federal question or diversity jurisdiction. Therefore, the Court addresses both grounds for jurisdiction.

1. Federal Question Jurisdiction

A district court has federal question jurisdiction in “all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. A case “arises under” federal law “only when the plaintiff’s statement of his own cause

1 of action shows that it is based upon federal law.” *Vaden v. Discover Bank*, 556 U.S.
 2 49, 60 (2009) (quoting *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152
 3 (1908)). Alleged defenses do not create a federal question basis for removal, even if
 4 the plaintiff’s complaint anticipates the defense. *Id.* at 60; *Franchise Tax Bd. v.*
 5 *Constr. Laborers Vacation Trust*, 463 U.S. 1, 10-12 (1983).

6 Plaintiff asserts only a state law cause of action in its Complaint for unlawful
 7 detainer under California Civil Procedure Code section 1161a. The summons and
 8 state court civil case cover sheet both only indicate a state law residential unlawful
 9 detainer cause of action. Defendant’s removal erroneously relies on the PTFA.
 10 Defendant contends that Plaintiff’s Complaint referenced the notice to quit, which in
 11 turn referenced the PTFA, and therefore the PTFA establishes a basis for federal
 12 question jurisdiction.

13 The PTFA “was intended to provide a defense in state eviction proceedings
 14 rather than a basis for offensive suits in federal court.” *Logan v. U.S. Bank Nat’l*
 15 *Assoc.*, 722 F.3d 1163, 1173 (9th Cir. 2013). Thus, Congress did not intend the PTFA
 16 to provide a basis for federal subject matter jurisdiction. Further, even if the PTFA
 17 provided a *federal defense* to Plaintiff’s cause of action, defenses do not create a
 18 *federal question basis for removal*.

19 2. Diversity Jurisdiction

20 A district court has diversity jurisdiction where complete diversity exists
 21 between the parties and the amount in controversy exceeds \$75,000. 28 U.S.C.
 22 § 1332(a).

23 Defendant does not assert citizenship. Defendant bears the burden to establish
 24 jurisdiction, and has failed to meet that burden as to diversity. Plaintiff’s Complaint
 25 expressly states the action is a limited civil case with an amount in controversy under
 26 \$10,000. Further, Plaintiff waived any amount in excess of the Court’s jurisdiction in
 27 Plaintiff’s Motion. (Mot. 4, 6.) Defendant did not oppose Plaintiff’s Motion or
 28 otherwise dispute Plaintiff’s asserted amount in controversy. Therefore, the amount in

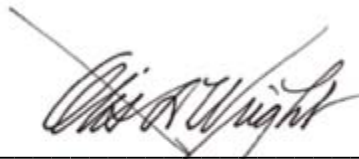
1 controversy fails to meet the requirement for diversity jurisdiction. Thus, the Court
2 does not possess diversity jurisdiction in this action.

3 **V. CONCLUSION**

4 For the reasons discussed above, the Court **GRANTS** Plaintiff's Motion to
5 Remand. (ECF No. 8.) The Clerk of the Court shall close this case.

6 **IT IS SO ORDERED.**

7
8 June 1, 2015

A handwritten signature in cursive script, reading "Otis D. Wright, II", is written over a horizontal line. The signature is in dark ink and is somewhat stylized.

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11 **OTIS D. WRIGHT, II**
12 **UNITED STATES DISTRICT JUDGE**
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